General Policy and Rules and Regulations of TCWD

CHAPTER 5: DEVELOPMENT CONDITIONS AND FACILITIES

Section 5.1 Conditions of Development and Expanded Service.

The provision by the District of water and sewer service is subject to the existence of all required facilities to provide such service as well as the existence of an executed Service Agreement as provided for in Section 5.7 of these Rules and Regulations and is expressly subject to these Rules and Regulations. Execution of a Service Agreement and payment of all applicable connection charges for a particular project (subject to a change in circumstances, such as supervening lawful restrictions imposed upon or accepted by the District, such as those imposed in the renewal or obtaining of a National Pollutant Discharge Elimination System Permit ("NPDES Permit"), Waste Discharge Requirements, or Permits for Use of Reclaimed Water or Recycled Water) will vest a conditional right to obtain service to the extent described in the Application for the service requested. The service requested will be provided on such basis as determined by the District.

In the event that the facilities of a particular Community Facilities District (CFD), Improvement Area (IA) or Assessment District (AD) cannot accommodate the Application or Applications for water or sewer service, or both, the Board in its discretion, may consider the possibility of interim use of unused or surplus capacity or the possible permanent use of facilities or capacity in facilities of other CFD's, IA's and AD's of the District. Unused capacity is that capacity existing within a CFD, IA or AD which may be necessary for future development within the CFD, IA, or AD, but which at present or at the time the Board considers the possibility of its use within other CFD, IA or AD is uncommitted. Surplus capacity is that capacity which exists within a CFD, IA or AD which in the determination of the Board will not be necessary for any future development foreseen within the particular CFD, IA or AD. Any such use of facilities of one CFD, IA or AD for the benefit of other areas of the District other than within the CFD, IA or AD for which such facilities were constructed shall be permitted only pursuant to an agreement executed on behalf of a CFD, IA, or AD setting forth the extent of such use and any applicable conditions. The Board in its discretion may require the prior approval of such

agreement by the California Regional Water Quality Control Board - San Diego Region, or the office of the State Treasurer, or both. In determining which facilities of a CFD, IA, or AD may be used for the benefit of other areas within the District, the Board shall determine that interim unused or surplus capacity exists as to the present and future needs of the particular CFD, IA, or AD. Any such determination shall take into consideration, but not by way of limitation, the following:

a. Existing use by the CFD, IA or AD of its facilities in which it is believed unused or surplus capacity may exist.

b. Construction of dwellings or commercial facilities which will require service to the extent such is occurring or which is anticipated to occur prior to construction of additional facilities to replace capacity being considered as unused or surplus relative to existing needs.

c. Approved tentative tract maps within the CFD, IA, or AD.

d. Approved or pending general land use plans within the CFD, IA, or AD.

e. The estimated period of time needed to construct and place in operation facilities to replace the capacity being considered to be made available outside of the CFD, IA, or AD for other areas within the District.

f. The assurance that all necessary agreements and approvals will be obtained when needed to permit construction by the District of facilities to replace capacity being considered as surplus to present needs and any possible conditions that it is anticipated that might be attached to such agreements.

g. The availability of funds to meet construction costs for additional capacity to replace capacity being considered as presently unused surplus relative to the present needs of the CFD, IA or AD.

In the event that such presently unused or surplus capacity is determined to exist, subject to such conditions as the Board may determine, any such presently unused or surplus capacity may be used for the benefit of other property within the District and its CFD, IA, and AD. Such use shall be for actual present users on the basis of the sequence in which applications for service are received from areas

within the District. In the event service is not commenced pursuant to any such application within a reasonable period of time as specified from time to time by the Board, such applications and any permits for service issued hereunder shall be terminated upon written notice to the Applicant. In the event of such termination, the Applicant, Owner or Consumer may submit a new Application on the basis of the then-existing Rules and Regulations of the District which shall be considered in sequence as of the date of filing any such new application.

In the event that the District determines that there is presently unused or surplus capacity and such capacity is not necessary for actual present uses within the District, it may be allocated for use relative to future proposed development of property within the District. Such allocation shall be as reasonable and equitable as possible, but shall be on such basis as the District shall determine and shall be subject to any conditions or restrictions which may be accepted by or imposed upon the District by other agencies. By making such allocation the District does not guarantee that capacity will be available at such time as an application for service is made but only indicates that at the time the allocation is made capacity is presently available. It is acknowledged by District and Applicant that subsequent occurrences may limit the ability of District to make such capacity available at a later date.

Section 5.2 Facilities Development.

Any water transportation or distribution system or sewer collection system facilities to the extent determined by District required to serve developments of property within the District shall be provided by the Applicant or Consumer at his or her expense. The Board will determine the specific requirements and the Board reserves the right to build any of the required public facilities itself at the expense of the Applicant or Consumer through the terms and conditions of a Will-Serve Letter as provided in Section 5.4. This shall include all sites and rights-of-way acceptable to District and adequate protection as determined by the Board to protect the District against the possible future cost of relocating or reconstructing such water distribution and sewer collection facilities by reason of future public or private improvements including grading and the alteration of drainage or discharge or surface, ground or flood waters. Such water distribution and sewer collection facilities shall include all such facilities necessary within the property lines of any parcel for which an application is submitted to District for service.

Where lands outside of an area described in the application for service can be served by facilities within the District and described in the application for service submitted to District, the District may require, in its discretion, the construction of water distribution and sewer collection systems, or other facilities, including but not by way of limitation, reservoirs, fire hydrants, pumping facilities and treatment capacity, either within the area, larger than the size determined by District to be required for providing adequate service to the property described in the application submitted to District for service. Such facilities shall be constructed by the District or by direct contract with the District.

When construction is done on a contract basis, the District may contract with the Applicant or Consumer for reimbursement on a pro rata basis for the difference between the cost of the facilities that the Developer is required to provide adequate service and the facilities that are already provided.

The terms, extent and provisions of any reimbursement agreements between the District and a Developer or subdivider shall be determined from time to time by the District in its discretion. In no event shall interest be paid on any reimbursable amounts. The period of time in which reimbursement will be made will be determined by the District depending upon the amount necessary to be advanced by an applicant, owner or Consumer in addition to other normal charges, the probability of receipt of payment, and of the then anticipated course of development of the particular portion of District in which the facilities are to be constructed. The amount so advanced for the facilities outside the area described in the application for service shall be taken into account when development occurs and District reserves the right to impose and charge additional connection charges, initial charges, and costs if necessary to cause equitable reimbursement in any such instances.

The terms and conditions of any reimbursement agreements shall be limited strictly to the infrastructure provided. Reimbursement to the parties shall be limited to the funds paid to the District by future applicants for services who shall use the infrastructure provided.

It is necessary for a developer to have on deposit with the District funds necessary to cover the cost of the contract. An initial meeting with the General Manager by persons desiring such a contract shall occur to obtain an estimate of the amount to be deposited. To avoid placing burden on the existing customers and ratepayers within the

District, its staff and consultants shall meet and consult with the Applicant or Consumer only after such Applicant or Consumer has deposited with the District the estimated cost for such contract. To determine such costs, persons desiring such meeting shall contact the General Manager to obtain an estimate of the amount to be deposited. After such deposit has been made, the requested meeting shall be scheduled. This procedure may be waived by the General Manager if, in his/her discretion, such meeting or consultation shall not require an expenditure by the District of an amount exceeding $100.00.

If for any reason the District deems it necessary to delay or stop work on any water or sewer facilities to be installed or constructed, a stop order shall be issued by the General Manager and delivered to the representative of the Applicant. Work shall cease in an orderly manner with proper safety measures and protection for materials, equipment, and property. Work shall not be resumed until issuance of an additional Notice to Proceed Order. The General Manager or the Board shall determine the time of connection to the District's water or sewer facilities as the case may be. Such decision shall not be the basis of any claim by an Applicant or Consumer or other person or concern for direct, indirect, consequential or other damages by reason of any such action but may be appealed to the Board for review.

Section 5.3 <u>Sub-Area Master Plans.</u>

If, in the opinion of the General Manager or District Engineer, the proposed development has the potential to use water in excess of one (1) Equivalent Dwelling Unit, the General Manager may require a Sub-Area Master Plan of an Applicant or Consumer. The condition of a Sub-Area Master Plan requirement may be a condition for the issuance of a Will-Serve Letter.

The purpose of a Sub-Area Master Plan is to determine the necessary infrastructure for water, wastewater, reclaimed, and recycled water systems. The extent of the analysis shall be determined by the District.

The District shall, at its sole discretion, determine the engineering consultant to prepare the plan and the cost of the Sub-Area Master Plan and all related District staff time shall be borne by the Application or Consumer. The Sub-Area Master Plan shall become the property of the District.

The length of time necessary to prepare a completed Sub-Area Master Plan may vary on a case by case basis and is dependent on the information available from the Applicant.

Section 5.4 Will-Serve Letters and Conditional Will-Serve Letters.

5.4.1 Will-Serve Terms and Conditions. A Will-Serve Letter (as defined in Section 1.3) may be issued subject to those terms and conditions as may be required by the District. Unless otherwise specified, a Will-Serve Letter will expire one (1) year after the date of issue or as otherwise provided within the Will-Serve Letter itself. Prior to obtaining a Will-Serve Letter the Applicant requesting the Will-Serve Letter may be required to comply with whatever terms and conditions the District, at the time of such request, determines to be necessary.

5.4.2 Will-Serve Letter Conditions. A Will-Serve Letter may set forth conditions under which it may be withdrawn. Such conditions may include, but not by way of limitation, that if service is not commenced within the term of an original tentative tract map approved by the County all obligations of District shall cease. Any fees to be refunded by District shall be paid to the Applicant upon recordation of a mutually acceptable document specifying the nonexistence of any obligation on the part of District to provide service until further compliance with all existing Rules and Regulations of District and any such refund shall be without the payment of any interest by District.

5.4.3 Will-Serve Letters and Tract Map Extensions. In cases where the Applicant requests the County to approve an extension of a tentative tract map, the Applicant must also consider a request of the District to extend its Will-Serve Letter. Extensions by the County of tract maps do not automatically extend the authorization period of the District's Will-Serve Letter. If the County does not approve the extension of the tentative tract map, the District shall not agree to any extension of the Will-Serve Letter. If the County does approve extension of the tentative tract map, the District shall make an independent finding and determination of whether to extend the Will-Serve Letter. An Applicant must formally request an extension of a Will-Serve Letter in writing. Absent such a request the Will-

Serve Letter will expire despite the County's extension of the tentative tract map. The finding and determination shall be based upon the Applicant's showing that he has proceeded with good faith and diligence to accomplish the development of the property desired to be served. The burden of such showing shall be the Applicant's.

5.4.4 Conditional Will-Serve Letters. In the event that the facilities and/or capacity of the District at a given point in time cannot accommodate the application, or applications, for water and/or sewer service, the Board may consider, in its sole discretion, the issuance of a Conditional Will-Serve Letter regarding water and/or sewer service to the subject property. A Conditional Will-Serve Letter is a letter issued by the District expressly indicating that the District cannot allocate sufficient water and/or sewer capacity to provide the requested level of service to the subject property and development described in the application and which states the level of capacity that can be allocated to such property. It shall provide that additional capacity does not exist but that upon the occurrence of stated conditions the District would be able to fully serve the property. Conditional Will-Serve letters shall not be issued without express action of the Board of Directors.

Except where noted in this section, all conditions and restrictions applicable to Will-Serve Letters issued by the District shall apply to Conditional Will-Serve Letters.

Upon receipt of an application which is subject to this Section the District shall send written notice to the Applicant, which notice shall include:

1. A statement that the District cannot allocate sufficient water and/or sewer capacity to provide the requested level of service to the subject property;

2. That unless objected to by the Applicant, the District shall treat the application as an application for a Conditional Will-Serve Letter; and

3. The notice shall include a copy of the section of the District's Rules and Regulations outlining the procedure for Conditional Will-Serve Letters.

5.4.4.1 Agreement. Prior to the issuance of a Conditional Will-Serve Letter regarding water and/or sewer service, the Applicant and the District shall enter into a written agreement. This agreement shall include the following:

1. A statement that the Applicant has requested a Will-Serve Letter from the District, which statement shall include:

    a. The tract number(s) and lot number(s) of the property which is the subject of the application.

    b. The number and type of unit(s), and/or level of capacity which has been requested in the application;

    c. The number and type of unit (s) , or level of capacity, which the District has allocated to the subject property.

2. Applicant shall agree to pay for District's reasonable attorneys' fees, engineering fees, and costs, related to the negotiation and completion of the agreement and the Conditional Will-Serve Letter.

3. An indemnity agreement whereby Applicant shall agree to indemnify District for any and all damages, costs and liability accruing from the District's issuance of the Conditional Will-Serve Letter, or the failure of subsequent developers and/or purchasers to take or receive notice of the limited allocation of water and/or sewer capacity.

4. A statement that the agreement is to be recorded in the office of the Recorder for the County of Orange.

5. The agreement shall have attached a map and

legal description of the property which is the subject of the Conditional Will-Serve Letter.

5.4.4.2 Hearing. Prior to the issuance of a Conditional Will-Serve Letter the Board shall hold a public hearing on the application. The public hearing may be held at any regular, adjourned regular or special meeting of the Board. At the public hearing the Board may consider, in its complete discretion:

1. Whether the notice requirements under subsection 5.4.4.3 have been met;

2. Whether an agreement, as specified in subsection 5.4.4.1, has been, or should be, entered into and the contents of that agreement;

3. Any and all public comments;

4. The issuance of a Conditional Will-Serve Letter; and

5. Any and all other matters which the Board, in its complete discretion, deems appropriate.

5.4.4.3 Notice. At the time of the hearing specified in subsection 5.4.4.2, written proof shall be provided to the Board that the notice requirements outlined in this subsection were completed at least seven (7) days prior to the hearing.

The notice required in this subsection shall include all of the following:

1. The name and address of the Applicant;

2. A statement that the Applicant has requested the District to issue a Conditional Will-Serve Letter pursuant to of the Rules and Regulations of the District regarding Conditional Will-Serve Letters;

3. A statement that a Conditional Will-Serve Letter is a letter issued by the District expressly indicating that the District cannot allocate sufficient water and/or sewer capacity to provide the requested level of service to the subject property and development described in the application;

4. An identification of the subject property by lot and tract number (and by street or block number if available);

5. The amount and/or level of capacity which has been requested by the Applicant;

6. The amount and/or level of capacity which has been allocated by the District;

7. A statement that the Board will hold a public hearing on the matter, which statement shall identify the time and place of the public hearing; and

8. A statement that members of the public are invited to attend and that the Board will receive public comments of reasonable length regarding this matter.

Notice shall be given as follows:

1. The notice shall be posted in at least three public places, in a conspicuous manner, within the boundaries of the District. One such posting shall be on the subject property; and

2. Publication of the notice one time in a newspaper of general circulation within the District; and

3. The notice shall be posted at the District office and such notice shall remain posted continuously for a period of seven (7) days.

5.4.4.4 Issuance of a Conditional Will-Serve Letter. Following the completion of the above-mentioned agreement and hearing, the District may, in its sole discretion, issue a Conditional Will-Serve Letter. The Conditional Will-Serve Letter shall be issued in the form approved by the District. A Conditional Will-Serve Letter may be issued subject to whatever terms and conditions may be required by the District. Prior to obtaining a Conditional Will-Serve Letter the Applicant may, in addition to completion and execution of the above-mentioned agreement, be required to comply with whatever terms and conditions the District, at the time of the request, deems in its sole discretion to be necessary.

The Conditional Will-Serve Letter may set forth conditions under which it may withdrawn. Such conditions may include, but not by way of limitation, that if service is not commenced within the term of an original tentative tract map approved by the County, all obligations of the District shall cease. Any fees which can be refunded by the District shall be paid to the Applicant upon recordation of a mutually acceptable document specifying the nonexistence of any obligation on the part of the District to provide any service until further compliance with all existing future rules and regulations of the District, and any such refund shall be without the payment of any interest by the District. If the Applicant requests an extension of the tentative tract map from the County, the Applicant shall concurrently request the District to extend its Conditional Will-Serve Letter for an identical period. If the County of Orange does not approve the extension of the tentative tract map, the District will not agree to any extension of the Conditional Will-Serve Letter. If the County does approve any extension of the tentative tract map, the District shall make an independent finding and determination of whether to extend the Conditional Will-Serve Letter. An Applicant must formally request an extension of the Conditional Will-Serve Letter, and absent a request, the Conditional Will-Serve Letter will expire despite the County's extension of

the tentative tract map. Discretion for the granting or denying of the extension of the Conditional Will-Serve Letter shall lie exclusively with the District.

Section 5.5 Development and Design Criteria and Standard Drawings for Water and Sewer Facilities.

In order to provide a uniform and consistent method of regulating and guiding the design and preparation of plans for construction of water and sewer facilities; and, of insuring proper installation of all private works involving water and sewer services, Design Criteria and Standard Drawings for Water and Sewer Facilities (Criteria) shall be maintained by the District.

The purpose of the Criteria is to provide standards for the water and sewer improvements and private works to be dedicated to the public and accepted by the District for operation and maintenance. This is necessary in order to provide for coordinated development of required facilities to be used by the public.

It is recognized that it is not humanly possible to anticipate all situations that may arise or to prescribe standards applicable to every situation. Therefore, any items or situations not included in the Criteria shall be designed and/or constructed in accordance with accepted engineering practice as required by the District authorized Engineer.

The Criteria shall be adopted by the Board and updated as necessary, as determined by the General Manager. The General Manager is granted the authority to approve waivers and exceptions to the adopted Criteria on a case by case basis.

Copies of the current Criteria shall be available at the District office and shall be available to interested parties upon request and payment of a fee determined by the General Manager. Such fee may be amended by the General Manager from time to time. The Criteria is incorporated herein by this reference.

Section 5.6 Project Approval.

Developers of residential, commercial, industrial or other types of Projects (as defined in Section 1.3 herein) shall obtain approval from the District prior to:

a. Construction of associated water and sewer and reclaimed facilities which they propose to connect to the District's system; or

b. Relocation of existing District facilities.

The Developer initiates a request for Project approval by submitting, to the District authorized Engineer, plans for the proposed improvements. The initial plan submittal shall be prepared by a California registered civil engineer. The District authorized Engineer shall review the Project plans and related information to insure their conformance with the District Criteria, District policies, good engineering judgment, and the best interest of the District.

At the District's discretion, the Developer may be required to fulfill any or all of the requirements for a Will-Serve Letter or Conditional Will-Serve Letter.

The Project shall be submitted to the General Manager for approval consideration when the following have been accomplished:

a. The improvement plans satisfy the requirements of the District Criteria and the District authorized Engineer;

b. The developer and/or Project-property owner have executed a development agreement; and,

c. The Project site has been annexed to the District.

Upon written request from the Project developer and/or Project engineer, the General Manager will review the requirements specified by the District authorized Engineer for the involved improvement plans, development agreement, or other related items, to determine if they are in keeping with the District Criteria, District policies, and/or the best interests of the District. If the subject of the request involves general engineering judgment, the General Manager may request an impartial opinion of another professional engineer (one who is not involved with the Project of its principals) who is qualified and competent in the area of water and sewer design.

Upon approval of the Project improvement plans by the General Manager, he/she shall inform the Board of the new Project.

Water and sewer service shall not be provided to the Project (i.e., installation of water meters) until the District approves the development agreement and it is fully executed.

Approval of a Project by the District is valid for one year. If significant construction of the Project has not commenced by the end of one year from the date of approval, or if construction commences and then is halted for more than one year, Project approval shall expire, unless extended by the District.

Section 5.7 Development (Construction) Agreement.

Prior to the Board considering a private development project for approval, a development agreement ("Development Agreement") specifying the terms and conditions of said approval, prepared by the General Manager and/or Legal Counsel, shall be executed by the Project's developer(s) ("Developer") and property owner(s) ("Owner").

The Development Agreement shall contain the following information:

a. Name(s) of Developer and/or Owner of subject property;

b. Assessor's parcel number of subject property;

c. Type and purpose of Project (e.g., residential, commercial, industrial, etc.); and,

d. A graphic description of the Project attached to the Development Agreement.

e. As determined to be necessary, insurance indemnification, naming the District as an additional insured for district services during the construction and warranty.

5.7.1 The following shall be used as standard terms and conditions of the Development Agreement:

a. **Standards for Water, Sewer and Reclaimed System**. Plans have, at no cost to the District, been designed and prepared for the on-site and off-site water, sewer and reclaimed system which include Developer's obligation to accomplish the following:

1. Construct the water, sewer and/or reclaimed system in conformance with the approved plans

therefore; and,

2. Obtain an encroachment permit from the Department of Public Works, or other appropriate department, of the Cities of Rancho Santa Margarita and/or Lake Forest or County of Orange, and comply with all requirements thereof, including trench restoration and street resurfacing requirements for any portion of the Project situated within existing or proposed future city or county right of way.

b. **Acceptance of Plans and Specifications**. The completed plans as described above for the water, sewer and/or reclaimed system have been prepared in conformance with District Criteria and the requirements of the District authorized Engineer, and are in a form acceptable to same.

c. **Revision of Plans**. Any changes in such accepted plans should require written approval of Developer, the Engineer of work, and the District authorized Engineer.

d. **Rights of Way**. Owners will provide to District, at no cost to District and in a form acceptable to the District authorized Engineer, appropriate easements and rights of way for the maintenance, repair, and replacement of all District facilities not within existing public rights of way, public utility easements, and/or District easements.

e. **Construction**. Developer shall, without expense to District, construct the water, sewer and/or reclaimed system pursuant to the accepted plans or any approved modification thereof. Developer shall provide, in any contract for construction of the water or sewer system, that any contractor's material supplier's guarantees thereunder, including a one (1) year warranty on the completed improvements, shall inure to the benefit of District after the works constructed thereunder have been conveyed to District as provided for in Section 5.10 below. Developer shall also provide in any contract for construction of the water or sewer system that the contractor's liability and property damage insurance shall be extended to cover liability and bodily injury limits of not less than $1,000,000 and property damage coverage

of not less than $1,000,000.

f. **Payment of Prevailing Wages**. Developer has been advised that the State Attorney General has opined that, in certain circumstances, construction of facilities for provision of public utility services, with the understanding and agreement that said facilities will be turned over to District for ownership, operation and maintenance at the conclusion of construction, may be subject to the prevailing wage laws of the State. Developer agrees, however, that should it be determined that the prevailing wage laws of the State (Labor Code 1770, et seq.) apply to the work performed in accordance with this agreement, then Developer shall defend and hold District harmless from any liability, claims, damages, or costs in any way associated with said determination by the State and Developer shall, as further consideration of District entering into this agreement, take all necessary and appropriate action, including payment of back wages, and any associated penalties which may be required, due to enforcement of the prevailing wage laws in connection with construction of the water, sewer and/or reclaimed system. Developer agrees that District has not represented or in any way advised Developer in connection with this matter except to inform Developer of his potential liability and Developer does not in any way rely upon any opinion or information of District in making his determination in connection with the payment or non-payment of such wages for the work performed under this Development Agreement. The obligation of Developer to, if required, pay prevailing wages for the work performed in accordance with this agreement shall be a continuing obligation and shall bind the heirs, successors and assigns of Developer and District's obligation to provide operation and maintenance on the facilities to be turned over to District, and to provide water, sewer and/or reclaimed water therein, shall be dependent upon Developer's continuing compliance with this provision.

g. **Inspection of Construction**. The District authorized Engineer, General Manager, or his/her agent(s) shall inspect the construction of the water, sewer and/or reclaimed system to assure that the works are installed

in accordance with the accepted plans. Said inspection shall be funded by an inspection fee paid by Developer as determined by the Board. Construction of the water, sewer and/or reclaimed system shall not commence until said inspection fee is paid. The District authorized Engineer shall notify Developer as to any deviation or failure to construct pursuant to the accepted plans as soon as such deviation or failure is brought to his/her attention, and Developer shall correct such deviation or failure. Photographing or videotaping of sewer lines prior to acceptance shall be conducted at Developer's sole cost.

h. **Hold Harmless**. District is not, by inspection of the construction or installation of the water or sewer system, representing Developer or providing a substitute for inspection and control of the work by Developer. Any inspections and observations of the work by District are for the sole purpose of providing notice of stage and character of the work. Any failure of District to note variances in the work from the plans does not excuse or exempt Developer from complying with all terms of the plans. The fact that District inspects the construction of work and notifies Developer of deviations or failures to construct them pursuant to the accepted plans shall not be deemed to constitute a guarantee by District that the work has been built in accordance with the accepted plans. Developer shall demonstrate to the District's satisfaction a three-month test period of satisfactory operation.

i. **Conveyance**. Within ninety (90) days after completion of construction of the water or sewer system in accordance with the accepted plans therefore and District's Criteria:

1. Developer and Owners shall convey title of the completed works to District without cost and free and clear of all liens and encumbrances, by appropriate conveying documents, acceptable in form to the District, its authorized Engineer, and/or Legal Counsel;

2. Developer shall provide District with one set of 24" x 36" reproducible, in addition to an electronic file of "as built" drawings of the completed project on matte Mylar (5 mil

minimum) signed by the Engineer of work; and

3. Owners shall provide easements as specified in Section 5.7.1(d), above.

4. Developer shall furnish to District a bond, irrevocable letter of credit, cash deposit, or other form of surety meeting District's approval in the amount equivalent to 10% of the cost of the water, sewer and/or reclaimed system, as estimated by the District authorized Engineer, protecting District against any failure of the work due to natural phenomenon or catastrophe, faulty materials, poor workmanship, or defective equipment within a period of one (1) year after acceptance of the water, sewer and reclaimed system by the District's Board. Said bond or irrevocable letter of credit shall name Developer as Principal and District as Obligee; and,

5. District shall accept conveyance of title of the completed water, sewer and/or reclaimed system by resolution and transfer of bill of sale and include it as part of its system, and shall thereafter operate and maintain said system.

5.7.2 Developer's Responsibilities After Conveyance. After District's acceptance of the water, sewer and reclaimed system, Developer and Owners shall have no obligation for the operation, maintenance, repair or replacement thereof, except that to the extent Developer and/or Owners retain ownership of any parcel to which service from such works is available, they shall pay the same rates and charges required by District as any other property owner.

a. **Application for Sewerage Service**. The water or sewer systems shall not be operated, other than for testing purposes, until said system is conveyed to District and formally accepted by District as specified above, and proper applications for service having been filed with District accepted.

b. **Obligation for Pipeline and/or Facilities**. District shall be under no obligation to provide additional facilities in order to serve the Project. Upon acceptance of the facilities by District, it shall become the sole property of District and shall be used and operated at District's sole

discretion.

c. **Rates and Charges for Services**. All service made available by District to uses within the Project shall be at the established rates and charges as fixed by the Board from time to time.

d. **Notices**. Notices or requests from any party to this Development Agreement to the remaining parties, thereof shall be in writing and delivered or mailed, postage prepaid, to the following addresses:

To District:	Trabuco Canyon Water District 32003 Dove Canyon Drive P.O. Box 500 Trabuco Canyon, CA 92678 Attn: General Manager
To Developer:	[Developer's Name] [Address] [City, State, Zip]

e.

f. **Successors and Assigns**. This Development Agreement shall be binding upon and inure to the benefit of the successors and assigns of all parties. Developer and Owners shall not assign any of their rights, duties, or obligations under this Development Agreement without the prior written consent of District.

g. **District Powers**. Nothing herein contained shall be deemed to limit, restrict, or modify any right, duty, or obligation given, granted, or imposed upon District by the laws of the State of California now in effect, or hereafter adopted, nor to limit or restrict the power or authority of District, including the enactment of any rules, regulations, policies, resolutions or ordinances, and in the event that any part of provisions herein contained in this Development Agreement or incorporated herein, be found to be illegal or unconstitutional by a court of competent jurisdiction, such findings shall not affect the remaining parts, portions, or provisions hereof.

h. **Attorney Fees**. Should any party have to be required to institute legal action to either compel performance of this Development Agreement or recover damages for non-performance, the prevailing party(s) shall be entitled to reasonable attorney's fees, cost of suit, and all other expenses of litigation incurred in connection therewith.

i. **Termination**. This Development Agreement shall terminate and be of no further force and effect at District's discretion if District determines that construction of the water, sewer and/or reclaimed system has not commenced within twelve (12) months from the date of this agreement, and Developer has not submitted the plans and specifications for reacceptance as provided above.

Any inapplicable portions of the foregoing standard terms and conditions may be deleted by, or amended, upon approval of the General Manager, to accommodate Project-specific situations. When warranted, additional conditions and requirements may be added to the standard terms and conditions by, or upon approval of, the General Manager to accommodate Project-specific situations.

Section 5.8 Service Agreements.

5.8.1 General. Water, sewer and reclaimed service shall be provided by the District only pursuant to a Service Agreement obtained as prescribed by the District. District water, wastewater or reclaimed water service shall be available only in accordance with District's Rules and Regulations, as well as applicable Federal, State and local laws, statutes, contracts and regulations, and the terms of any Service Agreement issued by District.

5.8.2 Application Procedure. An application for water, sewer and/or reclaimed service permit must be made in writing, signed by the Applicant and Consumer if they are not one and the same. The form of application shall be specified by the District and shall specify, in addition to estimated water requirements, whether the application is for the discharge into facilities of District of reclaimable or non-reclaimable sewage. The application shall set forth the Applicant's full name or company

name, a metes and bounds description of the property to be served or a description thereof acceptable to District, a map showing the location and area of the property and improvements to be served, the Applicant's relationship to the property as owner, tenant, lessee, etc., the purpose for which the property is to be used, estimated usage and any special conditions for service pursuant to these Rules and Regulations including, but not limited to, the estimated maximum service requirements set forth in the manner as specified by District.

a. **Residential Use Application**. The General Manager in his discretion may provide an abbreviated form of application for water and sewer service for residential purposes when no unusual facts are determined, in his discretion, to exist.

5.8.3 Application for Industrial or Non-Domestic Sewage. An application for service which would involve discharge of industrial or other non-domestic sewage, in addition to the information required above, shall state the estimated gallons of wastes proposed to be discharged and also state together with information as to peak loads, character of wastes, and such other details as the General Manager may direct or request. The Applicant shall comply with all Federal, State and local requirements including, but not by way of limitation, all requirements of the Environmental Protection Agency (the "EPA") including, but not limited to, any commitments for reimbursements required by the EPA in excess of the charges of District. These requirements are set forth in the Federal Water Pollution Control Act and the Code of Federal Regulations.

a. The District, in its discretion, may require specific prior approval of any permit by any agency or official of the State of California or the EPA, or any State or Federal Agency having jurisdiction over or an interest in the operation of District's facilities.

Upon receipt of an application, the Manager shall review the application and make such investigation relating thereto as he deems necessary. The Manager may prescribe requirements in writing to the Applicant as to the facilities necessary to be constructed, the manner

of connection, the financial requirements and the use of service including the availability of adequate water and sewerage facilities and grease traps, waste treatment facility, or other pretreatment, if necessary, to insure initial and future continued compliance with the Rules and Regulations and any other applicable District requirements.

Section 5.9 Dedication of Water Rights.

One of the purposes of these Rules and Regulations is to protect the public potable water natural supply resources for the District.

In conjunction with appropriate Water Basin Management practices, it is in the best interest of the District to maintain sufficient water rights to meet its need for groundwater resources. Although there will eventually be a limit on the amount of water available or allowed to be withdrawn from the groundwater basin, it is necessary to increase and confirm the District's water right capability whenever possible. It is also important to protect against improper use of existing private wells or unauthorized mixing of private well water with District system water and to seal abandoned wells in compliance with laws.

For all developing properties of one acre or less, a condition of water service will require the property owner to provide the District with an irrevocable dedication of underlying water rights at the time of the Final Map recordation. Properties over one acre in size will be considered on a case-by-case basis. A Grant for Water Rights form will be completed by the property owner, recorded by the County and then provided to the District.

Notification of such requirement will be provided to the Developer or owner in District Will-Serve Letters, Conditions for Approval and added as a general dedication with all of the District easements otherwise granted on the tract map. Such requirements will be provided directly from the District. The irrevocable dedication of all subsurface water right to the District will be required at the time of the Final Map recordation.

Section 5.10 Dedication and Acceptance of Facilities and Property.

The General Manager or such persons designated by the General Manager shall accept water, sewer and other facilities for the District after proper design, approval, construction, inspection and compliance with all requirements of the District's Rules and Regulations, including

acquisition of sites and rights-of-way as provided herein. Upon such acceptance, all such facilities and appurtenances shall become the property of the District. If the District requests, the Applicant or Consumer shall execute an Offer of Dedication/Bill of Sale or other satisfactory conveyance of the facilities to the District including, where proper, lien releases, the terms of which may include, but not by way of limitation, an agreement that the Applicant or Consumer shall and does hold the District harmless from all liens, claims or stop notices that may be filed in regard to the construction and guarantee of the workmanship and materials of the facilities for a period of one (1) year from their acceptance by the District. In certain instances a longer guarantee period may be required. Upon receipt of the Offer of Dedication, Bill of Sale, and if the Project meets above said requirements, the General Manager may execute a Certificate of Acceptance to the Applicant. Bonds associated with the Project may be released at the conclusion of the one (1) year period, or at the conclusion of the warranty period, if longer than one year.

All deeds conveying fee simple interest in real property to the District shall be in a form acceptable to the District legal counsel and the District authorized Engineer and shall be accompanied by a current litigation guarantee in a form acceptable to the District showing the current ownership of the subject property and showing that there are no prior encumbrances or easements on the subject property.

The District will assume responsibility for providing water and sewer service to individual lots within a development upon transfer to District of title to all facilities in the required water distribution and sewer collection system and any necessary easements therefore, which shall be in a form acceptable to the District and not subject to outstanding obligations to relocate such facilities or any deeds of trust except in instances where such is determined by the Board or the General Manager, to be in the best interests of District.

Section 5.11 Capacity Charges and Related Charges.

The District has adopted certain Capacity Charges (as defined in Section 1.3) to assist the District in meeting the financial obligations arising from the provision of water and water service required to meet the demands of new development, and certain redevelopment, within the District's service area. (See Appendix D, Current Schedule of Rates, Fees and Charges.)

The current Capacity Charges include:

a. The Capital Improvement Charge;

b. The Supplemental Water Capacity Charge; and

c. The In-Lieu Water Storage Charge.

The three above-referenced fees are hereinafter collectively referred to as the "Capacity Charges." The purposes of the individual Capacity Charges shall be as determined by the Board. The rates of the Capacity Charges, and the calculation thereof, shall be as determined by the Board from time to time. The District reserves the right to determine the methodology or calculation of each and every Capacity Charge. The imposition of the Capital Improvement Charge shall be subject to the provisions contained within these Rules and Regulations.

5.11.1 Property Subject to Capacity Charges. New development on property within the District, and redevelopment of property that results in a higher water use or water capacity requirement(s) (as expressed in meter size), shall be subject to the applicable Capacity Charges. The Owner/Developer of such property shall be responsible for paying, or otherwise satisfying, all applicable Capacity Charges prior to the approval of the Connection Permit and the provision of water service to such property.

5.11.2 Capacity Charges and Other Charges and Fees. Capacity Charges are separate from, and in addition to, Service Connection Charges, Water Rates and those rates and charges set forth in these Rules and Regulations.

Capacity Charge Exclusions: No Capacity Charges will be assessed if an Applicant is removing a meter and is replacing it with a water meter of the same size, providing that one of the following conditions is also satisfied:

a. The new water meter is installed on the same service line that the old meter is pulled from; or

b. The new water meter is installed on a new service line and the existing service line is abandoned when the old meter is pulled.

5.11.3 Application of Capacity Charges to Public Agencies. For purposes of this section "Public Agency" shall have the same meaning as set forth in Government Code Section 54999.1(c),

or any successor section thereto.

Any new development or application for increased water service by any Public Agency to the District shall be subject to appropriate Capacity Charges. The applicable amount of such Capacity Charges shall be determined in conformance with the then-current determination of the Board with respect to such Capacity Charges.

The determination of the Capacity Charges with regard to an individual Public Agency development project shall be made based on the same criteria and methodology applicable to non-public Applicants.

The imposition of the Capacity Charges on any school district/county office of education, community college district, the California State University, the University of California, or state agency, as defined in Government Code Section 54999.1(g), (collectively referred to as "School/State Agency" for the purposes of this section) shall be subject to the following:

a. The Capacity Charges shall be paid by such School/State Agency in an amount equal to the actual construction costs of that portion of the District's water system actually providing, or needed to provide, service to such School/State Agency.

b. To the extent that the appropriate Capacity Charges to such School/State Agency is in excess of the amount equal to the actual construction costs, the imposition and collection of said Capacity Charges shall be dealt with on a case by case basis by the District's staff.

5.11.4 Limitations of Use Under Connection Permit. At such time as application for a Connection Permit is made to the District, the Applicant shall specify on a map the area or number of units to be served through such connection(s) and the intended water use. The area or units and water use shall be described in the Application to the satisfaction of the District. Water from a connection to the District's water system under a Connection Permit as applied for, shall be used only upon the property specified in the Connection Permit. Should a user knowingly violate this section, the District may revoke the Connection

Permit and discontinue service. Service shall be resumed only upon such conditions as the Board may establish, including but not by way of limitation, payment of engineering, legal and administrative costs involved in enforcing the provisions of these Rules and Regulations by reason of said violation. This remedy is in addition to any penal provisions of this section or any other resolution, ordinance, rule or regulation of the District or any other applicable regulations, statutes or laws.

5.11.5 Acreage Fee Calculation of Capital Improvement Charge. This Section shall apply only to properties for which an acreage connection fee for water connection was paid to the District. Upon a determination by the District that a parcel of property is in violation of these Rules and Regulations, or, upon a request by the Owner or a Developer of property within the District for its determination of the amount of the Capital Improvement Charge required of the building/development to be constructed on the property, the District shall calculate the required amount of the Capital Improvement Charge for such property under the procedures specified in (b), below.

a. The procedure for the calculation for the Capital Improvement Charge shall be as follows:

i. The District shall determine the amount of the acreage connection fee previously paid and the date that it was paid to the District.

ii. The amount of the acreage connection fee previously paid shall be inflated to a currently equal amount by use of the Engineering News Record ("ENR") cost index ratio to determine its present value.

iii. The present value of the acreage connection fee previously paid shall be divided by the then current Capital Improvement Charge per unit, which shall be rounded to the nearest whole number. This resulting number is the number of units for which the District shall consider the Capital Improvement Charge for the property to have been paid.

5.11.6 Service Connection Charge. In addition to the Capital Improvement Charge, there shall be a service connection charge, as established by the Board from time to time,

determined by the facilities needed to make the connection and the cost of the meter and installation thereof and all other costs as defined herein. (See Appendix D, Current Schedule of Rates, Fees and Charges.)

5.11.7 Estimate and Construction Deposit. At such time as the Consumer or a Subdivider makes an application for a connection or permit, the General Manager will determine and require the deposit of a sum of money to cover the estimated District costs of engineering, legal, administrative or other costs involved in determining the amount of the Connection Charge, Service Connection Charge as well as to cover the costs of any required facilities in regard to the proposed connection. If this amount is required, it shall be deposited by the Consumer, Applicant or Subdivider in advance to cover such projected costs to the District. The time period for which costs will be projected and required to be deposited shall be as determined by the Board. In the event amounts deposited do not cover the District's costs, to date, all work and communication by District and its staff shall cease until such time as sufficient amounts, as determined by District are deposited. Deposits made pursuant hereto shall be strictly monitored by District and shall be required to be kept current.

5.11.8 Availability of Service. Application for service will be granted only where adequate systems as determined by the District have been installed and after payment of a processing fee. Where such facilities are not available, any application received shall be referred to the Board for appropriate action.

5.11.9 Agricultural Improvement Charge. An Agricultural Improvement Charge for water to be used for agricultural purposes was established at $401.00 as of January 1, 1986, for each acre, or portion thereof, to be served by the District's water system. This amount shall be adjusted annually by the Consumer Price Indexes Pacific Cities and U. S. City Average, All Urban Consumers, Los Angeles-Riverside-Orange Co. The applicable Agricultural Improvement Charge shall be paid, to the District, or otherwise satisfied, prior to an agricultural connection being made to the District's water system. The applied Agricultural Improvement Charge shall not be credited to new connections required in the event agricultural use of property is subsequently changed to domestic and/or commercial usage.